

Remarks

- 1) Claims 1-26 are pending in the application. Claim 1 was amended. Claims 18-26 have been cancelled without prejudice, and applicant maintains full rights to present those claims and all other material to which applicant is entitled, for future prosecution.
- 2) Claims 1-26 stand rejected as unpatentable under 35 U.S.C. 103(a) over Ceriani et al. (US 6,527,733) in view of Bartlett (US 6,074,355).
- 3) Applicant amended the specifications to correct a minor typographical error in paragraph [0022].
- 4) Applicant points out that the Ceriani extension stop 91 may NOT properly be equated with the compression element of the present invention, nor is it proper to combine the references as suggested by the Examiner. The present invention utilizes the compression element to provide elastic resistance by transferring compressional forces of the foot to during plantarflexion to the compression element, where the compression element acts to . Ceriani on the other hand utilizes his extension stop as a STOP to limit the motion of the hinge at the limits of motion. Applicant recognizes the need to avoid reading limitations into the claims and the need to provide the broadest REASONABLE interpretation to the claim terms, but reminds the examiner that the claims should be “given their broadest reasonable interpretation **CONSISTENT WITH THE SPECIFICATION**.” Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005), citing In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004) **"in light of the specification as it would be interpreted by one of ordinary skill in the art."** As such, equating the compression element of the present invention with the extension stops of Ceriani, AND adding the resilient matter characteristic -nowhere to be found in Ceriani - from Bartlett can only be considered as taking the term “compression element” in the complete abstract – ignoring any connection to the present specifications as required, and giving it the broadest **UNREASONABLE** interpretation for supporting an improper rejection.

- 5) This amendment does not surrender any disclosed subject matter. Applicant reserves every right to re-introduce the cancelled claims and additional claims to any subject matter not claimed heretofore in a later filed application. For at least the reasons detailed above, applicant specifically disagrees with any and all of the grounds for the rejections taken by the Examiner in this application.
- 6) Applicant further differentiated his invention by the feature of having the joint placed posterior superior to the ankle joint. Applicant amended claim 1 and the dependent claims to reflect this feature. Support for the amendment may be found for example in paragraph [0043] and elsewhere in the application.
- 7) Applicant believes that the rejections and objections presented by the Examiner in the final office action mailed to applicant May 12, 2009 were overcome. Applicant therefore submits that the claims as amended are in condition for allowance.
- 8) Reconsideration and withdrawal of the rejections, and allowance of all claims in the application as amended, is again requested. .
- 9) Should the Examiner find any deficiency in this amendment or in the application, or should the Examiner believe for any reason, that a conversation with applicant's agent may further the allowance and issuance of this application, the Examiner is kindly requested to contact Shalom Wertsberger at telephone (401)289-2891

Respectfully submitted

/Shalom Wertsberger/

Shalom Wertsberger

Reg. Num 43,359

1 Mathewson Road

Barrington RI 02806

Phone: (410)289-2891

Fax: (401)289-2892

Agent for Applicant